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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 03RD DAY OF APRIL 1998

BEFORE:

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

H.R.R.P. NUMBER 423/1994

Between:

1. Umakanth Mahabaleshwar Shetty
alias Harwadekar, Major
Now at Bangalore
C/o Govinda Mahabaleshwar Shetty
R/o Kaikini Road
Karwar, Uttara Kannada District.
2. Govind, S/o Mahabaleshwar
Shetty, Major
R/o Kaikini Road
Karwar, Uttara Kannada District.
3. Nirmala, D/o Mahabaleshwar
Shetty, alias Harwadekar
Major
R/o Kaikini Road
Karwar, Uttara Kannada District.
4. Smt. Ganga W/o Mahabaleshwar
Shetty, major
R/o Kaikini Road
Karwar, Uttara Kannada District. ... Petitioners

(By Sri Krishnamurthy R. Hasyagar)

And:

Chandrabas Tukaram Netalkar
Major, Goldmith
residing at
Kaikini Road, Karwar
Uttara Kannada District. ... Respondent

(By Sri P. M. Jalisatagi)

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This H.R.R.P. filed u/s. 115 of CPC against the order dt. 21.12.93 passed in HRC.RP. 7/88 on the file of the Dist. Judge, Karwar allowing the revision petition and confirming the order dt. 8.1.88 passed in HRC.P. 23/80 on the file of the Munsiff, Karwar.

This H.R.R.P. is coming on for hearing this day, the Court made the following:

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ORDER....

ORDER

Respondent herein had filed an eviction petition against the petitioner in respect of a residential premises situate in Karwar on the ground that the same is required for extending his gold smithy business.

This petition was resisted by the tenant. The parties went to trial and led evidence before the learned Munsiff. The learned Munsiff on appreciation of the evidence dismissed the eviction petition holding that the petition lacks bonafides. Aggrieved by the said order the landlord preferred a rent revision before the learned District Judge. The learned District Judge on reappraisal of the evidence set aside the order of the learned Munsiff and consequently ordered eviction. The tenants have challenged this order under Section 115 of the Code of Civil Procedure.

Sri Krishnamurthy Hasyagar learned counsel appearing for the petitioners-tenants contended that the approach of the learned District Judge in allowing the revision petition is contrary to the principles of law laid down by the Supreme Court in the decision in M.M. QUASIM VS. MANOHAR LAL SHARMA (AIR 1981 SC 1113). According to him even though

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the pleadings are silent regarding the particulars required for proving the case, the learned District Judge beyond the scope of pleadings had decided the case. He also submitted that during the pendency of the eviction petition respondent-landlord came into possession of two other premises the non-occupation of which takes away bonafides. The learned counsel also submitted that the learned Judge has not properly appreciated the evidence in the proper perspective for assessing the comparative hardship of the parties. Lastly he submitted that both the courts have not applied their mind about the feasibility of partial eviction.

Except the last contention there is no merit in the other contentions.

I have gone through the records and the order of the learned Munsiff and the learned District Judge. The landlord-petitioner has clearly stated in his petition that he is manufacturing gold jewellery items under a licence issued by the Customs and Central Excise Department. He has been carrying on the said business in a small space measuring $8\frac{1}{2}'$ x $7'$ in premises No.1635 about 3 Kms. away from Karwar Town. He has employed 20 workers on daily wage basis. It has become difficult for him to extend the business in the said premises.

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Therefore he requires the schedule premises for his own use and occupation. During enquiry he examined himself as PW.1 and has clearly stated that adjacent to the schedule premises he is now residing with his family members consisting of himself, his wife and two children. Besides one of his sister studying in P.U.C. is in occupation of the upstairs portion. He had filed similar eviction petition against two other tenants for the same purpose as in this petition and has obtained eviction. That at present he has been carrying on the business about 3 Kms. away from Karwar ^{town} ~~town~~ is not disputed nor the facts stated by him referred to above have been seriously challenged by the tenants. Under the circumstances it cannot be said that aspiring to shift and extend his business in a place that belongs to him is either unreasonable or lacks bonafides. Therefore the finding of the learned District Judge on this aspect cannot be faulted.

In so far as the availability of the adjacent two small tenements is concerned the tenant himself has suggested in cross-examination that the said premises is very small one. Availability of such a small place will not meet the requirement of the landlord who has got 20 workers to carry on the business. Therefore it cannot be said that

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the learned Judge has committed any error calling for interference. Quasim's case relied upon by the learned counsel is not applicable to this case. That was a case where admittedly the tenants had led evidence to show that the landlord apart from the schedule premises had some more houses which if occupied would have met the need. But in this case the tenant has not come forward with any plea in order to show the availability of accommodation to the landlord to meet his requirement.

In so far as the question of comparative hardship is concerned the tenant in this case has a hotel and the landlord is at present carrying on the business about 3 Kms. away from the place of his residence in a small area as stated above. If eviction order is refused virtually it would be compelling the landlord for all times to come to carry on the business in the said place without aspiring to extend the same. Under the circumstances the learned District Judge was justified in holding that the landlord suffers greater hardship.

In so far as the question of feasibility of partial eviction is concerned the parties have

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not led any evidence nor the court below have applied their mind. Hence ~~the~~ matter has to be remanded to the file of the learned Munsiff to enquire about the feasibility of partial eviction only after giving the parties opportunity to adduce such further evidence as they may choose in this behalf. It is made clear that the findings of the learned District Judge that the requirement of the landlord is reasonable and bonafide is upheld so also the finding of the learned Judge that the landlord suffers greater hardship in case eviction is refused. Since the matter is pending for a long time the learned Munsiff is directed to dispose of the matter within six months from the date of receipt of the order.

Revision petition is partly allowed.

Sd/-
JUDGE

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